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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Robin Fleck, an individual,
9 Plaintiff,

No. CV-10-8256-PCT-DGC

10 **ORDER**

11 v.
12 American Home Mortgage Servicing, Inc.,
13 et al,
14 Defendants.

15 Plaintiff Robin Fleck has filed a motion to strike and for sanctions. The motion
16 makes various arguments against Defendants: their written discovery responses were
17 untimely, the responses violated Rule 11, the responses were not verified by proper
18 corporate representatives, and Defendants failed timely to disclose a corporate
19 representative. Doc. 41. Plaintiff seeks serious sanctions – that the responses be stricken
20 and the requests for admission be deemed admitted. *Id.* Defendants have responded with
21 a point-by-point rebuttal showing, for several reasons on each point, that Plaintiff's
22 motion is not well taken. Doc. 41. Plaintiff has filed nothing in reply.

23 The Court will not devote substantial time to addressing the flaws in Plaintiff's
24 motion. The Court will, however, note some of the more obvious deficiencies.

25 The Court's Case Management Order (Doc. 23) provides: "The parties shall not
26 file written discovery motions without leave of Court. If a discovery dispute arises, the
27 parties promptly shall contact the Court to request a telephone conference concerning the
28 dispute." Doc. 23 ¶ 6(a). The Case Management Order also provides that discovery

1 disputes shall be raised with the Court before the close of discovery. *Id.* at ¶ 6(c).
2 Plaintiff failed to comply with both of these provisions.

3 The Case Management Order also states: “Parties shall not contact the Court
4 concerning a discovery dispute without first seeking to resolve the matter through
5 personal consultation and sincere effort as required by Local Rule of Civil Procedure
6 7.2(j). Any briefing ordered by the Court shall also comply with Local Rule of Civil
7 Procedure 7.2(j).” *Id.* at ¶ 6(b). Plaintiff’s motion does not contain the certification
8 required by Local Rule 7.2(j) attesting that she complied with this requirement, and
9 Plaintiff has provided nothing to rebut Defendants’ assertion that she did not.

10 Plaintiff’s request for Rule 11 sanctions fails to comply with Rule 11. The motion
11 was not filed separately from Plaintiff’s other sanctions requests as required by
12 Rule 11(c)(2), nor was it served on Defendants 21 days before its filing in court as
13 required by the same provision.

14 Plaintiff complains that Defendants’ discovery responses were late. This assertion
15 ignores the fact that the Plaintiff’s discovery requests were themselves untimely, being
16 filed less than 45 days before the discovery deadline contrary to paragraph 4(b) of the
17 Case Management Order. Doc. 23. Moreover, Defendants attach communications
18 showing that the responses were provided within the time agreed to by Plaintiff
19 (Doc. 42), a fact not disputed by Plaintiff.

20 Plaintiff claims that the discovery responses were verified by Jose Colon, an
21 individual employed by Defendant AHNMSI but not employed by Defendant Citibank
22 NA. Defendants note that Mr. Colon was authorized to sign for both Defendants (*see*
23 Doc. 37-1 at 2), a fact not disputed by Plaintiff.

24 The Court will not address the remaining issues raised in the motion and rebutted
25 in the response, as none of them is addressed in a reply by Plaintiff. Suffice it to say that
26 Plaintiff’s motion is not well taken and the Court will deny it.

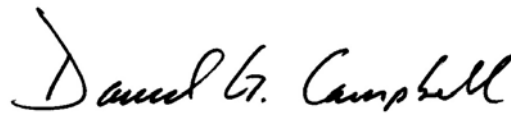
27 Defendants seek to recover attorneys’ fees incurred in responding to Plaintiff’s
28 motion. The Court is inclined to grant that relief, either against Plaintiff or her counsel or

1 both, but must first afford Plaintiff and her counsel an opportunity to be heard. Fed. R.
2 Civ. P. 37(a)(5)(B). The parties shall address this issue on the schedule set forth below.

3 **IT IS ORDERED:**

- 4 1. Plaintiff's request to strike and for sanctions (Doc. 37) is **denied**.
5 2. By **May 4, 2012**, Defendants shall file a memorandum and supporting material
6 setting forth the attorneys' fees and costs incurred in responding to Plaintiff's
7 motion. By **May 11, 2011**, Plaintiff shall file a response. By **May 16, 2012**,
8 Defendants shall file a reply. The initial memoranda shall not exceed seven
9 pages each (exclusive of attachments) and the reply shall not exceed four
10 pages.

11 Dated this 27th day of April, 2012.

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15 David G. Campbell
16 United States District Judge
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